NOV 18 [illegible]
[illegible]EL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-317

EDITH MAY CAMERON, STANLEY TAYLOR SIMS, KENNETH DAVIS, ROBERT STUART WILLIAMS, MARVIN CAMERON, JENNIE SIMS,

Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, Second Department

BRIEF FOR THE PEOPLE OF THE STATE OF NEW YORK IN OPPOSITION

NICHOLAS FERRARO
District Attorney
Queens County
Attorney for Respondent
125-01 Queens Boulevard
Kew Gardens, N. Y. 11415
(212) 520-2092

CORNELIUS J. O'BRIEN
CHARLES M. NEWELL
Assistant District Attorneys
Of Counsel

TABLE OF CONTENTS

	PAGE
Introduction	1
Opinions Below	3
Jurisdiction	3
Questions Presented	4
Statutes Involved	4
Statement of Facts	4
Argument	
Point One—No question concerning the constitutional right to confront witnesses is properly before this Court	11
Point Two—The case presents no substantial federal question requiring resolution by this Court	13
Point Three—The finding of probable cause for the issuance of the search warrant is in accord with prior decisions of this Court	16
Conclusion	17

TABLE OF AUTHORITIES

PAGE

Cases:

Aguilar v. Texas, 378 U.S. 108 (1964) 16, 17

Beck v. Washington, 369 U.S. 541 (1962) 12

Coil v. United States, 343 F. 2d 573 (8th Circuit, 1966), *cert. denied* 382 U.S. 821 15
Counselman v. Hitchcock, 142 U.S. 547 (1892) 13

Fountain v. United States, 384 F. 2d 124 (5th Circuit, 1968), *cert. denied sub nom.* Marshall v. United States, 390 U.S. 1005 ..... 14, 15

Garrity v. New Jersey, 385 U.S. 493 (1967) 13

Hoffman v. United States, 341 U.S. 479 (1951) 13

In re Gault, 387 U.S. 1 (1967) 13

Jones v. United States, 362 U.S. 257 (1960) 16

Malloy v. Hogan, 378 U.S. 1 (1964) 13
Michael v. Louisiana, 350 U.S. 91 (1955) 12
Miranda v. Arizona, 384 U.S. 436 (1966) 13

Namet v. United States, 373 U.S. 179 (1963) 14
New York *ex rel.* Bryant v. Zimmerman, 278 U.S. 63 (1928) 12

Parker v. Illinois, 333 U.S. 571 (1948) 12
People v. Alfinito, 16 N.Y. 2d 181 (1965) 8
Pointer v. Texas, 380 U.S. 440 (1965) 14

Quinn v. United States, 349 U.S. 155 (1955) 13

PAGE

Spevak v. Klein, 385 U.S. 511 (1967) 13
Spinelli v. United States, 393 U.S. 410 (1969) 16, 17
State v. McKuin, 434 F. 2d 391 (8th Circuit, 1970), *cert. denied* 401 U.S. 911 15
Street v. New York, 394 U.S. 576 (1969) 12, 13

Ullman v. United States, 350 U.S. 422, rehearing denied 351 U.S. 928 (1956) 13
Ungar v. Sarafite, 376 U.S. 575 (1964) 12, 13
United States v. Aiken, 373 F. 2d 294 (2d Circuit, 1967), *cert. denied* 389 U.S. 833 15
United States v. Brickley, 426 F. 2d 680 (8th Circuit, 1970), *cert. denied* 400 U.S. 826 15
United States v. Cardillo, 316 F. 2d 606 (2d Circuit, 1963), *cert. denied* 375 U.S. 882 .....14, 15
United States v. Collier, 362 F. 2d 135 (7th Circuit 1966), *cert. denied* 385 U.S. 977 15
United States v. Norman, 402 F. 2d 73 (9th Circuit, 1968), *cert. denied* 397 U.S. 938 15
United States v. Ventresca, 380 U.S. 102 (1965) 16, 17

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-317

EDITH MAY CAMERON, STANLEY TAYLOR SIMS, KENNETH DAVIS, ROBERT STUART WILLIAMS, MARVIN CAMERON, JENNIE SIMS,

Petitioners,

against

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New York, Appellate Division, Second Department

BRIEF FOR THE PEOPLE OF THE STATE OF NEW YORK IN OPPOSITION

Introduction

This is a brief in behalf of respondent in opposition to a petition for a writ of *certiorari* to an intermediate appellate court of the State of New York, the Supreme Court of the State of New York, Appellate Division, Second Judicial Department.

On May 15, 1972, the petitioners, Robert Williams and Marvin Cameron, were convicted of criminal possession of a dangerous drug in the second degree and sentenced to an indeterminate term of imprisonment not to exceed fifteen years; Stanley Taylor Sims and Kenneth Davis were convicted of criminal possession of a dangerous drug in the third degree and sentenced to indeterminate terms of imprisonment not to exceed fifteen years and twelve years, respectively; and Jennie Sims and Edith May Cameron were convicted of criminal possession of a dangerous drug in the sixth degree and sentenced to a fine of $1,000.00 and a period of probation not to exceed three years.

Petitioners all pleaded guilty before Mr. Justice William C. Brennan in Supreme Court, Criminal Term, Queens County, on February 17, 1972.

In an order of the Supreme Court of the State of New York, Appellate Division, Second Department, dated December 29, 1972, that court affirmed the order of the trial court, dated November 30, 1971, which denied a motion to suppress physical evidence on the ground that no probable cause existed for the issuance of a search warrant. However, the order of the trial court dated January 25, 1972, which denied without a hearing a motion to suppress the evidence on the ground that the affidavit upon which the search warrant was based was perjurious, was reversed and the appeal held in abeyance pending a determination of this issue at a hearing by the trial court.

Following a hearing by the trial court, the motion to suppress the evidence on the basis of perjury contained in the affidavit was denied in an order dated August 14, 1973

and the judgment of conviction was affirmed by the Supreme Court of the State of New York, Appellate Division, Second Department, in an order dated May 6, 1974.

Opinions Below

The first judgment of the Supreme Court of the State of New York, Appellate Division, Second Department, was rendered in an opinion officially reported at 44 A.D. 2d 355 (1974). The second judgment of that court was rendered in an opinion officially reported at 44 A.D. 2d 355 (1974).

On May 29, 1973, Judge Sol Wachtler, Associate Judge of the Court of Appeals of the State of New York, denied the petitioners' request for leave to appeal to the Court of Appeals. Judge Wachtler's certificate denying leave to appeal is not officially reported.

Jurisdiction

The orders of the Supreme Court of the State of New York, Appellate Division, Second Department, were entered on or about December 29, 1972 and May 6, 1974, respectively, the dates the decisions were rendered. An extension of time within which to file this brief in response to the petition for a writ of certiorari was granted by this Court, and the time has been extended to and including November 19, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (3).

Questions Presented

1. Whether issues involving the constitutional right of an accused to confront witnesses against him, which were not presented to the state courts, can be raised for the first time in this Court?

2. Whether an accused is deprived of his constitutional right to confront witnesses against him where such a witness invokes his privileges against self-incrimination with regard to a collateral issue in the case?

3. Whether the personal observations of an affiant police officer revealing a pattern of highly unusual behavior furnish probable cause for the issuance of a search warrant?

Statutes Involved

United States Constitution:

Fourth, Fifth and Fourteenth Amendments.

Statement of Facts

Petitioners were indicted on June 8, 1971 under Indictment Numbers 2115/71 and 2116/71. Edith May Cameron and Marvin Cameron were indicted for the crimes of criminal possession of dangerous drugs in the first degree (Penal Law §220.23), promoting gambling in the first degree (Penal Law §225.10), possession of gambling records in the first degree (Penal Law §225.20) and possession of a dangerous weapon as a misdemeanor (Penal Law §265.05).

Stanley Taylor Sims, Robert Williams and Kenneth Davis were indicted for the crimes of criminal possession of dangerous drugs in the first degree (Penal Law §220.23), promoting gambling in the first degree (Penal Law §225.10) and possession of gambling records in the first degree (Penal Law §225.20). Jennie Sims was indicted for the crimes of promoting gambling in the first degree (Penal Law §225.10), possession of gambling records in the first degree (Penal Law §225.20) and possession of a dangerous weapon as a misdemeanor (Penal Law §265.05).

Prior to the entering of guilty pleas by all the petitioners, a motion was made to controvert the search warrant and suppress the evidence obtained thereby. Since all petitioners waived a hearing on the motion to suppress and elected to contest the legality of the search on the law only, the only facts in this case are those which appear in the affidavit of Patrolman Lucido Bonino in support of his application for the search warrant. This affidavit, which was sworn to May 21, 1971, before Judge Nicholas Tsoucalas, appears in section "D" of petitioners' appendix. From it, the following facts may be gleaned:

On Tuesday, May 18, 1971, at about 11:10 a.m., Patrolman Lucido Bonino, a plainclothesman assigned to gambling investigations, saw one Stanley Sims, a man listed in Police Department records as "Known Gambler No. 4993," leave his residence in St. Albans, Queens, and enter an automobile. Seated behind the wheel of the automobile was a male Negro whom Bonino did not know.

Patrolman Bonino knew Sims to be a man "involved in illegal policy operations." His affidavit in support of the

search warrant discloses that, in the records of the New York City Police Department, Sims is listed as having been arrested 15 times for "Policy Violations, most of which are for Controller of Policy Operations."

Sims and the unknown man drove to 145-40 New York Boulevard, Jamaica, New York, and entered that premises. Patrolman Bonino remained outside and kept the premises under observation for 5 hours. He saw "approximately" six unknown male Negroes enter and remain inside. At 4:30 p.m., Sims, who was carrying a large paper bag, and the driver of the automobile left 145-40 New York Boulevard and drove back to Sims' residence in St. Albans. Both Sims and his companion entered Sims' home, with Sims still carrying the paper bag.

Bonino kept Sims' home under surveillance for 35 minutes and saw "numerous unknown males" knock on the front door and carry on short conversations with Sims. Each man handed Sims brown envelopes and departed. The brown envelopes, according to Patrolman Bonino, were of a kind which are used by "policy collectors."

The next day, at approximately the same time in the morning, Patrolman Bonino again went to the Sims' residence. He observed Sims and the driver of the vehicle again leave and drive to the same place in Jamaica. While Bonino watched for six and one-half hours, he saw the same type of transactions repeated that he had observed the previous day.

On the following day, Thursday, May 20, 1971, Bonino kept Sims, his residence and the Jamaica premises under

observation for over five hours, and again observed the same type of transactions take place.

Bonino concluded that Sims and the driver of the automobile were receiving and accepting policy wagers. On May 21, 1971, he applied for and received a search warrant authorizing him to search Sims' home, the Jamaica address, and a 1970 Plymouth automobile, for gambling paraphernalia.

Pursuant to a search warrant issued by Judge Tsoucalas, a large quantity of policy slips was seized at 145-40 New York Boulevard. In addition, the police found 20 lbs. of pure heroin and two loaded revolvers.

The search of Sims' residence resulted in seizure of additional gambling records, two more revolvers, over $40,000 in cash and diamonds and other jewelry valued at about $15,000. A subsequent search of Sims' bank safe deposit box resulted in the seizure of approximately $70,000 additional cash and some U.S. Savings Bonds.

This motion to controvert the warrant and to suppress the evidence seized thereby was denied without a hearing on November 30, 1971, in an opinion by Hon. Frank D. O'Connor. A second motion to controvert the warrant and suppress the evidence on the basis that the warrant was issued on an affidavit containing perjurious statements was denied without a hearing by Hon. William C. Brennan in an order entered January 26, 1972.

On December 29, 1972, the appellate court ordered that the cases of the six petitioners be remitted to the court be-

low for a hearing and a new determination on petitioners' motion to suppress evidence on the ground that statements contained in the affidavit upon which the search warrant was issued were perjurious. The court noted that the burden of proof would be on the appellants and that any fair doubt arising from the testimony at the hearing would be resolved in favor of the warrant [see *People* v. *Alfinito*, 16 N.Y. 2d 181 (1965)].

On June 6, 1973, a hearing was conducted in Supreme Court, Queens County, before Hon. William C. Brennan in accordance with the order of the appellate court dated December 29, 1972.

Patrolman **Lucido Bonino**, Shield No. 7514, 67th Precinct, New York City Police Department, testified that he had been a member of the Police Department for approximately ten years, and that for three of those years he had worked in the area of gambling investigation. Officer Bonino stated that he began work at approximately 8:00 a.m. on the morning of May 18, 1971, and that at 11:10 a.m. he and Officer Fratello approached appellant's (Stanley Sims) house in a private vehicle. He observed Mr. Sims leave his house and enter a 1970 Plymouth. The officers followed Sims to 145-40 New York Boulevard in Jamaica, the residence of Edith and Marvin Cameron. Officer Bonino was asked if he was ever subpoenaed or requested to testify before a federal grand jury in connection with his investigation of Stanley Sims. He refused to answer, invoking his constitutional privilege.

Officer Bonino testified that he was subpoenaed before a federal grand jury but not directly in reference to the Sims

case. The witness said that he arrested Sims along with the other petitioners on May 21, 1971. At the time of the arrest he and his fellow officers seized drugs and money from the Cameron and Sims homes. Officer Bonino refused to answer questions relating to the seizure of drugs or money that was not reported to the Police Property Clerk. He stated that as far as he could recall he wasn't questioned by the federal grand jury regarding the truthfulness of the affidavit that he submitted in order to procure the search warrant in the case at bar. Bonino said that at his direction an affidavit for a search warrant was prepared for the purpose of investigating a policy operation.

Bonino stated that on May 18, 1971, he made certain observations of the Sims home, but he could not remember if he had made notes in his memo book. Bonino said he made observations on May 19, 1971, and put them on a slip of paper which he had in his possession. He wrote in his memo book only that he was in the vicinity of the Sims residence but not all the details surrounding his observations. The officer stated that while observing the Sims address, he and his fellow officer changed vantage points several times. Bonino testified that he and his fellow officer had observed the Cameron house from a parking lot of a supermarket which was directly across the street. Sims and the unidentified driver of the 1970 Plymouth entered the Cameron residence and remained inside the residence for approximately two hours. Officer Bonino stated that while he was observing the Cameron residence he didn't see any policy slips, or hear anyone discussing any bets. Bonino said that the policy is based on the numbers in the third, fifth and seventh races, and that the envelopes could have been bets for the next day or for previous work. The

witness stated that he procured a search warrant for the Sims and Cameron residences and also for the 1970 Plymouth, that he prepared an affidavit when he made the application for the warrant and that he swore to the truth of the statements contained in the affidavit before Judge Tsoucalas.

Henry Schnitzer, residing at 253 Broadway, New York City, testified that he had been a member of the Bar of the State of New York for over thirty years, and a member of the New York City Police Department for six years preceding his law career. During his tenure in the Police Department, he had been sworn as an expert to testify in cases involving policy operations. Mr. Schnitzer stated that no one places policy bets after the third race on a given day and that no special envelopes were used in a policy operation.

Edith Cameron, one of the petitioners, residing at 145-40 New York Boulevard, Springfield Gardens, New York, testified that between 11:30 a.m. and 2:30 p.m. on the 18th of May, 1971, only Stanley Sims came to her residence. She stated that the remaining petitioners joined Sims that evening at her home. On the 19th of May only Kenneth Davis and Robert Williams came to her house.

On cross-examination, Edith Cameron testified that she pleaded guilty to the crime of criminal possession of gambling records in the second degree in the case which was the subject of the hearing.

Jennie Sims, one of the petitioners, residing at 197-01 116th Avenue, St. Albans, New York, testified that no one

came to her house between the hours of 2:55 p.m. and 3:30 p.m. on the 18th, or 19th of May, 1971.

On cross-examination, Mrs. Sims testified that she had pleaded guilty to criminal possession of gambling records in the second degree.

The order and opinion of Mr. Justice Brennan, dated August 14, 1973, denying the petitioners' motion to controvert the warrant and suppress the evidence seized thereby, is included as section "A" of the petitioners' appendix.

POINT ONE

No question concerning the constitutional right to confront witnesses is properly before this Court.

During the course of a hearing on a motion to controvert a search warrant and to suppress the evidence seized thereby, the police officer, who swore to the truth of the information contained in the affidavit on which the warrant was based, invoked his constitutional right not to incriminate himself when asked certain questions. The petitioners contend that the claim of testimonial privilege by the affiant officer unduly restricted their right to cross-examine the witness and, therefore, violated their constitutional right to confront the witnesses against them. The petitioners also argue that a police officer, acting as an agent of that state, could not claim testimonial privilege and that, by allowing him to do so, the state wrongfully withheld evidence of its own agent's corruption.

Essential to the jurisdiction of this Court under 28 U.S.C. §1257(3) is a requirement that the substantial fed-

eral questions advanced by the petitioners must have been properly raised in the state court proceedings [*Michael* v. *Louisiana*, 350 U.S. 91, 93 (1955); *Parker* v. *Illinois*, 333 U.S. 571, 574 (1948). Absent any indication that the appellate procedure of the state did not provide a reasonable opportunity to the petitioners to assert their constitutional claims, the petitioners have the burden of showing that they raised the issues [*Ungar* v. *Sarafite*, 376 U.S. 575, 582-3 (1964); *Beck* v. *Washington*, 369 U.S. 541, 549-50 (1962)]. Furthermore, the claims of federal right must be presented to the state court with fair precision and the record must show that the petitioners either expressly raised the issues or clearly intended to do so [*Street* v. *New York*, 394 U.S. 576, 581-82 (1969); *New York ex rel. Bryant* v. *Zimmerman*, 278 U.S. 63, 67 (1928)].

Following a hearing on the motion to controvert the search warrant in the instant case on the ground that the affidavit of the police officer underlying the warrant contained perjurious statements, the trial court denied the motion, rejecting the petitioners' sole contention that when the officer claimed his testimonial privilege, an admission of perjury was inherent therein, and that, therefore, they had met their burden of proof on the motion to controvert. This was also the sole issue included in the petitioners' brief to the intermediate appellate tribunal and the opinion of the appellate court makes clear that it was the only issue considered by that court in affirming the order of the trial court. The Court of Appeals of the State of New York declined hearing the case.

It is clear, then, that the issues involving the confrontation of witnesses are raised for the first time in this Court,

never having been raised in any state court proceeding. Under these circumstances, the issues are deemed waived [*Street* v. *New York, supra; Ungar* v. *Sarafite, supra*].

POINT TWO

The case presents no substantial federal question requiring resolution by this Court.

Even if the issues advanced by the petitioners with respect to the right to confront witnesses were properly before this Court, it would be unnecessary for the Court to exercise its jurisdiction both because of previous decisions of this Court and because the resolution of the instant case hinges upon a determination of its facts.

Recognizing that the privilege against self-incrimination is a personal, substantive right that is unequivocal and without exception, this Court on numerous occasions has declared that the right must be liberally construed in favor of the right it is intended to secure [*In re Gault*, 387 U.S. 1 (1967); *Spevak* v. *Klein*, 385 U.S. 511 (1967); *Miranda* v. *Arizona*, 384 U.S. 436 (1966); *Malloy* v. *Hogan*, 378 U.S. 1 (1964); *Ullman* v. *United States*, 350 U.S. 422, rehearing denied 351 U.S. 928 (1956); *Quinn* v. *United States*, 349 U.S. 155 (1955); *Hoffman* v. *United States*, 341 U.S. 479 (1951); *Counselman* v. *Hitchcock*, 142 U.S. 547 (1892)]. Thus, the contention of the petitioners that a police officer should not be permitted to invoke the privilege against self-incrimination has specifically been rejected by this Court [*Garrity* v. *New Jersey*, 385 U.S. 493 (1967)]. Since the state could not compel the officer to incriminate himself, inasmuch as the privilege exists to protect the individual

from the force of the state, it necessarily follows that the state cannot, as petitioner contends, be charged with the withholding of evidence involving the alleged corruption of its agents.

The sole issue in this case is whether the petitioners were deprived of their constitutional right to confront witnesses against them when the police officer witness invoked his testimonial privilege.

While the constitutional right of an accused to confront witnesses against him includes the right to effective cross-examination [*Pointer* v. *Texas,* 380 U.S. 440 (1965)], reversible error is not invariably committed whenever a witness claims his constitutional privilege not to answer questions which might tend to incriminate him [*Namet* v. *United States,* 373 U.S. 179, 185-186 (1963); *United States* v. *Cardillo,* 316 F. 2d 606 (2d Circuit, 1963), *cert. denied* 375 U.S. 882]. Rather, it is necessary to look to the circumstances of each case to determine whether the claim of testimonial privilege substantially curtailed the right to effective cross-examination [*Namet* v. *United States, supra*]. A determination of whether a claim of testimonial privilege substantially impairs the right to cross-examination depends upon an analysis of the purpose of the questions asked and the role which the answers, if given, might have played in the defense [*Fountain* v. *United States,* 384 F. 2d 624 (5th Circuit, 1968), *cert. denied sub nom. Marshall* v. *United States,* 390 U.S. 1005].

In the instant case, the trial court found, *as a matter of fact,* that the affiant officer invoked his right against self-incrimination only when asked about his conduct in con-

nection with the execution of the warrants and not with respect to the affidavit preceding it. This finding of fact was affirmed in the opinion of the intermediate appellate tribunal. Thus, the state courts found that the police officer witness did not claim his testimonial privilege with regard to the critical issue of perjurious statements in the affidavit, but only with regard to the collateral issue of the execution of the warrant, a factor which merely bore upon the witness' credibility. The courts have uniformly held that a claim of privilege which goes only to a collateral issue in the case does not amount to an undue restriction of the right to confront witnesses [*State* v. *McKuin*, 434 F. 2d 391 (8th Circuit, 1970), *cert. denied*, 401 U. S. 911; *United States* v. *Brickley*, 426 F. 2d 680 (8th Circuit, 1970), *cert. denied* 400 U.S. 826; *United States* v. *Norman*, 402 F. 2d 73 (9th Circuit, 1968), *cert. denied* 397 U.S. 938; *Fountain* v. *United States*, 384 F. 2d 124 (5th Circuit, 1968), *cert. denied sub nom. Marshall* v. *United States*, 390 U.S. 1005; *United States* v. *Aiken*, 373 F.2d 294 (2d Circuit, 1967), *cert. denied* 389 U.S. 833; *United States* v. *Collier*, 362 F. 2d 135 (7th Circuit, 1966), *cert. denied* 385 U.S. 977; *Coil* v. *United States*, 343 F. 2d 573 (8th Circuit, 1966), *cert. denied* 382 U.S. 821; *United States* v. *Cardillo*, 316 F. 2d 606 (2d Circuit, 1963), *cert. denied* 375 U.S. 882].

POINT THREE

The finding of probable cause for the issuance of the search warrant is in accord with prior decisions of this Court.

The petitioners contend that the search warrant in the instant case was based upon an affidavit which contained insufficient facts upon which to base a finding of probable cause.

It is well settled that, while mere suspicion without supporting facts will not support the issuance of a search warrant, the requisite standard of probable cause is met by facts which demonstrate only the probability, and not a *prima facie* showing, of criminal activity [*Spinelli* v. *United States,* 393 U.S. 410, 419 (1969); *Aguilar* v. *Texas,* 378 U.S. 108, 112 (1964)]. Furthermore, this Court has indicated that a reviewing court should give deference to the determination of the independent magistrate and that marginal cases should be resolved in favor of the warrant [*Spinelli* v. *United States, supra,* at 419; *United States* v. *Ventresca,* 380 U.S. 102, 108 (1965); *Jones* v. *United States,* 362 U.S. 257 (1960)].

The affidavit of the police officer in the instant case clearly indicates that all the affirmative allegations contained therein, with the possible exception of the fact that Stanley Sims was a "known gambler," were based entirely upon the personal observations of the affiant. These observations (Petitioners' Appendix "D") disclose a pattern of identical behavior over a period of days which included the passage of brown envelopes which the affiant,

from his expertise in the field of policy operations, knew were the kind of envelopes used by policy collectors.

This pattern of activity, which could properly be characterized as "abnormal activity," when tested by common sense in a realistic fashion, provided a substantial basis for the magistrate to conclude that there was a sufficient probability of criminal activity to justify the issuance of a warrant [*Spinelli* v. *United States, supra,* at 415; *Aguilar* v. *Texas, supra,* at 111; *United States* v. *Ventresca, supra,* at 108].

Conclusion

The petition for a writ of certiorari should be denied in all respects.

Respectfully submitted,

NICHOLAS FERRARO
District Attorney
Queens County

CORNELIUS J. O'BRIEN
CHARLES M. NEWELL
Assistant District Attorneys
Of Counsel

November, 1974